IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

CRL.A.No. 150 of 2004()

SC.817/2000 of II ADDL.SESSIONS COURT, KOLLAM
CP.229/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA
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APPELLANT:

BILAL @ BABY,
S/O. BHASKARAN PILLAI, C.NO.6939,
CENTRAL PRISON, TRIVANDRUM-695 012.

BY ADV. SRI.ALEXANDER SKARIA
SRI.GRASHIOUS KURIAKOSE

RESPONDENT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.150 OF 2004 (A)

Dated 2nd August, 2007

JUDGMENT

Koshy, J.

Appellant accused in Crime NO.132/2000 is alleged to have murdered his own mother, was convicted and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code. Charge against him was that on 15.4.2000, at about 5 p.m., the accused, eldest son of deceased Anandavally, had exchange of words with his wife at a place at the "Kaveri Hotel" in Kulathupuzha village regarding the repayment of the loan and when the deceased interfered, the accused had quarreled with the deceased and at about 5.30 p.m. on 15.4.2000 at the kitchen of the Kaveri Hotel, accused struck against the head of deceased Anandavally with a chopper, a dangerous weapon inflicting severe injuries on her head, nose, chin etc. causing her instantaneous death.

2. PW1 is the brother of the deceased who gave Ext.P1 F.I.Statement which was given within 10 minutes of the occurrence to the nearby Police Station. He has not seen the incident fully. In the F.I.statement he stated that he is a lorry driver. Deceased is his sister and she was conducting a hotel named "Kaveri Hotel". She is living there with the family. While he was standing near the petrol pump at Kulathupuzha, he heard cry from the house of the sister. He rushed there and at that time he saw PW2 wife of the accused, PW3 Deepa and his brother Prasannan. They were crying in the house and he asked what happened. Then he was told that accused had a quarrel regarding repayment of loan taken by his wife and then he started to assault his wife. The deceased, his mother interfered and therefore he took a vettukathy (MO1), a type of chopper, which was lying nearby and hit at the head of the deceased twice. She got injured and lying motionless and he saw her lying dead in a pool of blood. He also stated that the accused went away with vettukathi. F.I.Statement was given without delay before getting any time for manipulation. When PW1 was

examined, he deposed that he did not see accused going away with MO1. Even though he turned hostile, he admitted that he has given the F.I.Statement. According to him he has not seen the accused and accused did not attend the cremation also. He has not enquired about the accused also even though his mother died. We can understand that even though when he saw his sister daily he told the correct story but on pursuant of time, when his nephew was found with chopper he tried to help his relative.

3. PW2, wife of the accused also turned hostile. But she stated that she and the accused had quarrel regarding the repayment of loan and when the incident happened, she, PW3 and PW4 were present in the house but she was in her room. She also identified MO1 as the one used in their house and MO2 is the kailee of the accused. She also deposed that her husband used to abuse and assault her and accused did not participate in the funeral ceremony of her mother. According to her, local people say accused has done it but she has not seen the incident. PW3, the grand daughter of the

sister of the deceased also denied the incident. But in the cross examination, she admitted the presence of the accused also at the time in the house. She deviated from her earlier version given to the police in 161 Statement, hence she was declared hostile. She also stated that she like to see that her uncle is not punished. PW4 brother of the deceased though admitted her presence in the house deviated from the police statement and was declared hostile. It is settled law that merely because a witness was declared hostile, his evidence need not be discarded and court can accept the believable part in the testimony (***See State of U.P. v. Ramesh Prasad Mishra and another (AIR 1996 SCW 2766), Gura Singh v. State of Rajasthan ((2001) 2 SCC 205), Gurupreet Singh v. State of Haryana (AIR 2002 Sc 3217)***.

4. MO1 weapon was recovered on the basis of disclosure of the appellant. Recovery mahazer is Ext.P11 and Ext.P11(a) is the extract of the confession statement wherein it is stated that

It is also come out in evidence that accused went there and took the MO1 knife. It is argued that there is no specific admission that he has concealed it. But the statement will show that he has concealed it and authorship of that is implied in the sentence. It is also not explained by him why he went there and how he got the information that knife is concealed there etc. MO1 knife was identified by his own wife and it was blood stained as can be seen in the Chemical examination report Ext.P14 proved by PW14. It is seen that MO2 kailee identified as that of the accused by his wife PW2 was also blood stained and accused has no explanation how the blood occurred in his kailee even though the alleged eye witnesses became hostile. The admissible part of evidence of PW1, brother of the deceased and PW2 wife of the accused coupled with recovery and blood stained on the basis of the confession statement admitted under Section 27 of the Evidence Act and unexplained blood stain in the MO2

kailee of the accused and totality of the evidence shows that only conclusion possible is that accused and accused alone is guilty with the murder of his own mother and nobody else. We fully agree with the reasonings of the Sessions Court and hence we see no ground to interfere in the above conviction and sentence imposed on the appellant and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.150 OF 2004 (A)

Dated 2nd August, 2007

JUDGMENT